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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 12, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CALEB V. DORMAIER, a single person,

Plaintiff,

v.

CITY OF SOAP LAKE, SOAP LAKE
POLICE CHIEF RYAN COX, JUSTIN
D. ROWLAND, individually and in his
official capacity as a police officer for the
City of Soap Lake,

Defendants.

No. 2:19-CV-00354-SAB

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT;
DENYING PLAINTIFF'S
MOTION TO STRIKE**

A video hearing was held in the above-captioned matter on November 5, 2020. During the hearing, the Court considered the following motions: (1) Defendants' Motion for Summary Judgment, ECF No. 22; (2) Plaintiff's Motion to Strike Portion of Affidavit of Justin Rowland in Support of Motion for Summary Judgment, ECF No. 25; and (3) Plaintiff's associated Motion to Expedite, ECF No. 26. Plaintiff was represented by Douglas Phelps. Defendants were represented by Christopher Kerley.

During the hearing, the Court orally denied Plaintiff's Motion to Strike, finding that the challenged portions of Officer Rowland's affidavit were not offered for the truth of the matter asserted and went to Officer Rowland's state of

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT; DENYING PLAINTIFF'S MOTION TO STRIKE * 1**

1 mind. Having considered the briefing, the arguments made in the hearing, and the
 2 relevant law, the Court grants Defendants' Motion for Summary Judgment.

3 **Facts**

4 The following facts are pulled from the First Amended Complaint, ECF No.
 5 7, the parties' statements of material fact, and the body camera footage submitted
 6 in support of Defendants' motion. This case arises out of an incident between
 7 Plaintiff, Mr. Dormaier, and Officer Rowland on October 12, 2017. Around 11:13
 8 a.m., Officer Rowland was dispatched to a physical domestic assault in Soap Lake,
 9 Washington. He was told by dispatch that N.C.,¹ an adult woman who lived at the
 10 address, was requesting police contact and alleging that she had been assaulted by
 11 Mr. Dormaier. Officer Rowland was aware that Mr. Dormaier had a history of
 12 domestic incidents with N.C., who was an ex-partner, and had recently been
 13 trespassed from her residence. Officer Rowland was also aware from other law
 14 enforcement reports that Mr. Dormaier had a history of displaying hostility toward
 15 law enforcement. While en route to N.C.'s home, dispatch advised Officer
 16 Rowland that a knife had been used in the alleged assault on N.C., and that Mr.
 17 Dormaier had fled the residence on a four-wheeler towards the canal road.

18 With his body camera activated, Officer Rowland interviewed N.C. She said
 19 that Mr. Dormaier came to her residence while her mother was home. Her mother
 20 told him he could not be there and that he needed to leave. At some point later, Mr.
 21 Dormaier allegedly returned to the residence, entering through an unlocked
 22 window, and walked into N.C.'s bedroom. She said she started to scream for her
 23 mother, but did not know that she had left. She then alleged that Mr. Dormaier
 24 pulled a kitchen knife out of his pocket, placed it on the television stand next to
 25 N.C.'s bed, and put a black pillow over her face; he allegedly said he put the pillow

26
 27 ¹ Because N.C. is not a party to this suit and is an alleged victim of domestic
 28 violence, the Court chooses to use her initials to refer to her instead of her full
 name.

1 over her face so no one would hear her scream. N.C. then reported that Mr.
2 Dormaier took her cell phone and fled from the residence. N.C. then went to a
3 neighbor's house to call for help. While meeting with N.C., dispatch advised that
4 Mr. Dormaier had called in and left his phone number with dispatch, requesting to
5 talk with Officer Rowland via cell phone.

6 N.C. showed Officer Rowland to her bedroom and showed him the knife and
7 the pillow she alleged were used in the assault. She also showed him the window
8 Mr. Dormaier came through; next to the window, Officer Rowland found a
9 footprint on the seat of a barstool consistent with a sneaker-type shoe. N.C. told
10 Officer Rowland the print must have been new because she had not seen it before.
11 Officer Rowland finished speaking with N.C. and her neighbor, and then headed
12 towards the canal road to see if he could find Mr. Dormaier. After he was done
13 speaking with N.C. and her neighbor, he turned off his body cam and got into his
14 car.

15 Officer Rowland drove over to the canal bank off Road A Northeast, where
16 N.C. and her neighbor said Mr. Dormaier likely was, and located a man with an
17 ATV. Officer Rowland pulled up Mr. Dormaier's most recent booking photo and
18 identified the man as Mr. Dormaier. Although Officer Rowland was told by
19 dispatch that Mr. Dormaier wished to speak with a law enforcement officer, based
20 on his conversation with N.C. and what he observed at her home, Officer Rowland
21 believed he had probable cause to arrest Mr. Dormaier for burglary and assault.
22 Officer Rowland intended to arrest Mr. Dormaier for those crimes.

23 Officer Rowland turned his body camera on and stopped near Mr. Dormaier
24 and the ATV. Officer Rowland got out of his patrol vehicle and asked Mr.
25 Dormaier to take his hands out of his pockets and walk toward him. Mr. Dormaier
26 complied. Officer Rowland then asked Mr. Dormaier to turn around and put his
27 hands behind his back. As Officer Rowland reached for Mr. Dormaier's right arm
28 to turn him around, Mr. Dormaier told Officer Rowland that he was not being

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1 detained, that Officer Rowland could not do anything to him, and pulled away. He
2 momentarily pulled his right arm back in a fist and yelled at Officer Rowland, but
3 relaxed his hand and arm and asked why Officer Rowland was doing this to him.
4 Mr. Dormaier swore at Officer Rowland. Officer Rowland responded, saying that
5 he would tase Mr. Dormaier if he did not comply. Mr. Dormaier continued to yell
6 at Officer Rowland and question his authority to detain him, again pulling away
7 from Officer Rowland. Officer Rowland drew and pointed his taser and told Mr.
8 Dormaier to get on the ground. Officer Rowland again told Mr. Dormaier that he
9 would be tased if he did not comply. Mr. Dormaier shuffled away from Officer
10 Rowland, and Officer Rowland followed to close the gap.

11 During this time, Mr. Dormaier can be heard on the body camera footage
12 repeatedly saying he had not done anything illegal and asking for Officer Rowland
13 to call another officer to the scene. Officer Rowland notified dispatch that he had a
14 non-cooperative subject at taser-point and requested backup. Officer Rowland
15 again ordered Mr. Dormaier to get on the ground. Mr. Dormaier got on his knees
16 and asked that Officer Rowland not tase him. His back was to Officer Rowland at
17 this point. Officer Rowland alleged that Mr. Dormaier's right hand was balled into
18 a fist and that he could see a blue object in his hand; this is not clear from the body
19 camera footage. Officer Rowland ordered Mr. Dormaier to put his hands on his
20 head; instead, Officer Rowland alleges Mr. Dormaier put his hands in the front
21 pocket of his sweatshirt. Officer Rowland also alleges that Mr. Dormaier put
22 something in his mouth, but this is not clear from the body camera footage either.
23 Officer Rowland again told Mr. Dormaier to put his hands on his head and that he
24 was under arrest. In response, Mr. Dormaier talked animatedly with hands to
25 protest the order and placed his hands in his sweatshirt pocket. He turned his head
26 and asked "What am I being arrested for?". Officer Rowland replied that he was
27 being arrested for burglary and assault.

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1 Officer Rowland alleges at this point that he became worried for his safety.
2 Mr. Dormaier remained on his knees, but appeared to be standing up from his
3 kneeling position and had not put his hands on his head. Officer Rowland tased
4 Mr. Dormaier in the back, delivering one five-second cycle. Officer Rowland
5 alleges that, as Mr. Dormaier was being tased and fell to the ground, he saw a
6 black cell phone and a lighter come out of Mr. Dormaier's pocket. Officer
7 Rowland instructed Mr. Dormaier to roll over onto his stomach and put his hands
8 behind his back. Instead, Mr. Dormaier returned to his kneeling position on his
9 knees. Officer Rowland tased Mr. Dormaier again, delivering a second five-second
10 cycle. Mr. Dormaier slid down the embankment of the canal road, coming to rest
11 about five feet from the road. Officer Rowland ordered Mr. Dormaier to come back
12 to the road and lie down on his stomach. Mr. Dormaier complied. Officer Rowland
13 then notified dispatch that he had used his taser and again requested backup.
14 Officer Rowland also alleges that, when Mr. Dormaier was tased the second time
15 and fell down the embankment, he saw a second lighter and cell phone come off of
16 Mr. Dormaier's person.

17 Officer Rowland kept Mr. Dormaier on the ground until backup arrived.
18 During this time, Mr. Dormaier can be heard saying things to Officer Rowland
19 including "you're going to get killed," "you're going to end up dead," and "I'm not
20 threatening, but karma!". Eventually, officers from the City of Ephrata and the
21 Grant County Sheriff's Office arrived to assist in detaining Mr. Dormaier. Mr.
22 Dormaier was later placed in the backseat of a patrol car. Grant County Sheriff's
23 Deputy Bushy eventually transported Mr. Dormaier to the Grant County Jail. On
24 December 6, 2017, Mr. Dormaier pled guilty to the crimes of assault in the fourth
25 degree in violation of Wash. Rev. Code 9A.36.041(2) and domestic violence in
26 violation of Wash. Rev. Code 10.99.201.

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**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT; DENYING PLAINTIFF'S MOTION TO STRIKE * 5**

Procedural History

Plaintiff originally filed a Complaint in the District of Idaho on October 10, 2019. ECF No. 1. The case was then transferred to the Eastern District of Washington at Plaintiff's request on October 16, 2019. ECF No. 3. A First Amended Complaint ("FAC") was filed on December 18, 2019. ECF No. 7. The FAC alleges two general causes of action. Cause of Action 1 alleges claims under the Fourth Amendment, the Washington State Constitution, and state law tort claims of assault, battery, and false imprisonment arising out of Officer Rowland's use of a taser. Cause of Action 2 alleges Defendants City of Soap Lake and Chief Cox negligently trained, retained, and supervised Officer Rowland. Specifically, Plaintiff alleges that the city and Chief Cox failed to have proper procedures in place to adequately document or investigate injuries to arrestees and failed to have proper procedures in place to assure that officers would take steps to protect citizens from assaultive behavior from fellow officers. Plaintiff seeks damages for past and future medical expenses, emotional/psychological counseling, loss of earnings, impairment of earnings capacity, and permanent and partial disability, and for pain and suffering and loss of enjoyment of life. He also seeks injunctive relief to prevent future actions to protect others similarly situated, including training or retraining officers of the City of Soap Lake Police Department.

Summary Judgment Standard

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party has the initial burden of showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-moving party must go beyond

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1 the pleadings and “set forth specific facts showing that there is a genuine issue for
 2 trial.” *Anderson*, 477 U.S. at 248.

3 When considering a motion for summary judgment, a court may neither
 4 weigh the evidence nor assess credibility; instead, “the evidence of the non-movant
 5 is to be believed, and all justifiable inferences are to be drawn in his favor.”
 6 *Anderson*, 477 U.S. at 255. The non-moving party cannot rely on conclusory
 7 allegations alone to create an issue of material fact. *Hansen v. United States*, 7 F.3d
 8 137, 138 (9th Cir. 1993). When there is video footage, as there is here, and
 9 “[w]hen parties tell two different stories, one of which is blatantly contradicted by
 10 the record, so that no reasonable jury could believe it, a court should not adopt that
 11 version of the facts for purposes of ruling on a motion for summary judgment.”
 12 *Scott v. Harris*, 550 U.S. 372, 380 (2007). However, the mere existence of video
 13 footage of an incident does not foreclose a genuine factual dispute as to the
 14 reasonable inferences that can be drawn from that footage. *Vos v. City of Newport*
 15 *Beach*, 892 F.3d 1024, 1028 (9th Cir. 2018); *Young v. Cty. of Los Angeles*, 655
 16 F.3d 1156, 1161 n.6 (9th Cir. 2011) (finding that the number of times a plaintiff
 17 was hit by an officer with a baton was a question for the jury because a brief audio
 18 clip did not blatantly contradict the plaintiff’s factual claim).

19 In addition to showing there are no questions of material fact, the moving
 20 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
21 Wash. Law Sch., 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled
 22 to judgment as a matter of law when the non-moving party fails to make a
 23 sufficient showing on an essential element of a claim on which the non-moving
 24 party has the burden of proof. *Celotex*, 477 U.S. at 323.

25 Discussion

26 Defendants raise several grounds on which the Court should grant them
 27 summary judgment. First, they argue that Officer Rowland had probable cause to
 28 arrest Mr. Dormaier for burglary, robbery, assault, and interfering with a domestic

1 violence report. Second, they argue that Officer Rowland did not use excessive
 2 force when he deployed his taser twice on Mr. Dormaier. Third, they argue that,
 3 even if the Court concluded that Officer Rowland used excessive force, he is
 4 entitled to qualified immunity for his actions. Fourth, they argue that Plaintiff's
 5 First Amended Complaint fails to allege facts sufficient to establish liability
 6 against either the City of Soap Lake or Chief Cox. Finally, they argue that Plaintiff
 7 has failed to state a claim under Washington state law or the Washington state
 8 constitution.

9 The parties generally agree on the facts here. Insofar as there are disputes,
 10 the Court cannot ignore the body camera footage introduced by Defendants in
 11 support of their motion. To the extent Plaintiff's version of the facts is inconsistent
 12 with that record, the Court may not accept it to create a dispute of material fact
 13 because the body camera footage forecloses Plaintiff's version of events. *Scott*, 550
 14 U.S. at 380; *Young*, 655 F.3d at 1161 n.6. The Court therefore finds that, based on
 15 the body cam footage, there are no genuine disputes of material fact.

16 1. Probable Cause Claim

17 Plaintiff claims that Officer Rowland violated his Fourth Amendment rights
 18 by detaining and arresting him without probable cause. Defendants argue that
 19 Officer Rowland did in fact have probable cause.

20 Probable cause to arrest exists when officers have knowledge or reasonably
 21 trustworthy information sufficient to lead a person of reasonable caution to believe
 22 that the offense has been or is being committed by the person being arrested. *Rodis*
 23 v. City & Cty. of San Francisco, 558 F.3d 964, 969 (9th Cir. 2009). Whether an
 24 officer has sufficient knowledge or information to constitute probable cause to
 25 arrest is based on the totality of the circumstances. *Maryland v. Pringle*, 540 U.S.
 26 366, 371 (2003). If an arrest is supported by probable cause, then there is no
 27 violation of the Fourth Amendment.

1 Here, the facts show that Officer Rowland had taken a victim and witness
 2 statement from N.C. indicating that Mr. Dormaier entered N.C.’s home through a
 3 window, displayed a knife, covered her face with a pillow, and stole her phone.
 4 Based on the totality of the circumstances, this was probable cause to arrest Mr.
 5 Dormaier for the crimes of burglary, robbery, and assault. Because Officer
 6 Rowland had probable cause to arrest, there was no Fourth Amendment violation.
 7 Defendants’ motion is granted as to this claim.

8 2. Excessive Force Claim and Qualified Immunity Defense

9 Plaintiff argues that Officer Rowland violated his Fourth Amendment rights
 10 by using excessive force when Officer Rowland tased him twice. Defendants argue
 11 that Officer Rowland did not use excessive force and, even if he did, he would be
 12 entitled to qualified immunity.

13 Qualified immunity protects government officials, including police officers,
 14 from liability when their conduct “does not violate clearly established statutory or
 15 constitutional rights of which a reasonable person would have known.” *Harlow v.*
 16 *Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity is “an immunity from
 17 suit rather than a mere defense to liability” and is “effectively lost if a case is
 18 erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526
 19 (1985). Thus, courts should resolve questions of qualified immunity “at the earliest
 20 possible stage in the litigation.” *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per
 21 curiam).

22 A police officer sued under § 1983 is entitled to qualified immunity unless it
 23 is shown by facts taken in the light most favorable to the plaintiff that the official
 24 violated a statutory or constitutional right that was “clearly established” at the time
 25 of the alleged misconduct. *Plumhoff v. Rickard*, 572 U.S. 765, 778-79 (2014). A
 26 right is clearly established if the right’s contours are sufficiently definite such that
 27 the question confronted by the officer is beyond debate. *Ashcroft v. al-Kidd*, 563
 28 U.S. 731, 741 (2011); *see also Taylor v. Riojas*, 592 U.S. ----, Case No. 19-1261

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1 (November 2, 2020) (per curiam) (finding that, where the alleged misconduct is so
 2 egregious any reasonable officer would be on notice, plaintiff need not identify a
 3 case that is factually identical to survive qualified immunity). The right must not
 4 be described at too high a level of generality. *Id.* With regard to excessive force
 5 claims, the qualified immunity analysis is fact-intensive, and police officers are
 6 entitled to qualified immunity unless existing precedent squarely governs the
 7 specific facts at issue in the case. *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018).

8 The use of excessive force by a police officer may constitute a violation of
 9 the Fourth Amendment's prohibition against unreasonable seizures. *Lowry v. City*
 10 *of San Diego*, 858 F.3d 1248, 1254-55 (9th Cir. 2017) (citing *Graham v. Connor*,
 11 490 U.S. 386, 395 (1989)). Determining the objective reasonableness of a
 12 particular seizure requires a "careful balancing of the nature and quality of the
 13 intrusion on the individual's Fourth Amendment interests against the
 14 countervailing governmental interests at stake." *Graham*, 490 U.S. at 396. The
 15 factors a court should consider include the severity of the crime at issue, whether
 16 the suspect poses an immediate threat to the safety of officers or others, and
 17 whether the suspect is actively resisting arrest or attempting to evade arrest by
 18 flight. *Id.* at 396-97. Whether an officer believes that the suspect poses an
 19 immediate threat to safety is the most important factor in this analysis. *Chew v.*
 20 *Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994). In making this determination, courts
 21 should allow for the fact that police officers are often forced to make split-second
 22 judgments about the amount of force necessary in a particular situation and should
 23 not judge officers with the benefit of 20/20 hindsight. *Graham*, 490 U.S. at 396-97.

24 Relevant here, courts have concluded that the use of a taser in dart mode² is
 25 an intermediate, significant non-lethal level of force that must be justified by the
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27 ² Tasers generally have two modes: drive-stun, wherein the taser is pressed against
 28 a person's body, and dart mode, wherein aluminum darts attached to the taser by
 wires spring out and attach to a person's body. *Bryan*, 630 F.3d at 824. Tasers in

governmental interest involved. *Bryan v. MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010); *Mattos v. Agarano*, 661 F.3d 433, 443 (9th Cir. 2011). It has also been recognized that it is “undeniable that being ‘tased’ is a painful experience” and may result in immobilization, disorientation, loss of balance, and weakness even after the electrical current has ended. *Beaver v. City of Federal Way*, 507 F. Supp. 2d 1137, 1144 (W.D. Wash. 2007).

The Court acknowledges that the question of whether Officer Rowland used excessive force is a close call, and that reasonable juries could come to differing conclusions. Officer Rowland had probable cause to believe Mr. Dormaier had committed burglary, a crime which carries an inherent risk of violence. *Sandoval v. Las Vegas Metro. Police Dept.*, 756 F.3d 1154, 1163 (9th Cir. 2014). Based on the allegations made by N.C. and Officer Rowland’s knowledge of Mr. Dormaier’s previous interactions with law enforcement, Officer Rowland reasonably believed Mr. Dormaier might be armed with a weapon. *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1091 (9th Cir. 2013). Finally, Officer Rowland was the sole responding officer to deal with an admittedly frustrated and belligerent arrestee in a rural area, with back-up unable to promptly arrive. However, a jury could also give weight to the fact that Mr. Dormaier himself requested police contact and left a knife he allegedly carried at N.C.’s house, seemingly reducing the fact that he would respond to an officer with violence or attempt to flee. Furthermore, courts have recognized that an already completed robbery does not justify the use of extreme force. See, e.g., *Collender v. City of Brea*, 605 Fed. App’x 624, 628 (9th Cir. 2015). In addition, to the extent Mr. Dormaier made statements that could have been construed as threatening, those statements were not made until after Officer Rowland had tased Mr. Dormaier twice. See, e.g., *S.R. Nehad v. Browder*, 929 F.3d 1125, 1136 (9th Cir. 2019).

dart mode are more powerful and deliver a higher charge than tasers in drive-stun mode.

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1 However, it is not clear that Officer Rowland's conduct was so obviously
2 unconstitutional that he or any other reasonable officer would have been on notice
3 of its unlawfulness. For example, in *Beaver v. City of Federal Way*, the Western
4 District of Washington concluded that although an officer's first use of a taser was
5 not excessive given the suspect's belligerence and the fact that the responding
6 officer was alone, his second use of the taser was excessive, because by that time
7 backup had arrived and the suspect was no longer actively resisting arrest. 507 F.
8 Supp. 2d at 1144. Here, Officer Rowland was alone in a rural area with a resistant
9 suspect, and backup was not certain to come quickly. Because there was no case
10 law as of October 12, 2017 that unambiguously announced a right to not be tased
11 in these circumstances that would have put Officer Rowland or another reasonable
12 officer on notice, Officer Rowland is entitled to qualified immunity on Plaintiff's
13 excessive force claim. Defendants' motion for summary judgment is therefore
14 granted as to the excessive force claim.

15 3. Municipal Liability Claim against City of Soap Lake

16 Plaintiff asserts in his FAC that the City of Soap Lake should be held liable
17 for the actions of Officer Rowland because it allegedly had an unconstitutional
18 policy or practice that led to his injuries. Defendants argue they are entitled to
19 summary judgment because Plaintiff has introduced no evidence of such a custom,
20 policy, or practice; Plaintiff did not address this argument in his response.

21 A municipality cannot be held vicariously liable for its employees'
22 constitutional violations. *Monell v. Dept' of Soc. Servs.*, 436 U.S. 658, 690 (1978).
23 Instead, a municipality is liable in a § 1983 action only "if it is alleged to have
24 caused a constitutional tort through 'a policy statement, ordinance, regulation, or
25 decision officially adopted and promulgated by that body's officers.'" *City of St.*
26 *Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell*, 436 U.S. at 690).
27 The plaintiff must show that the municipality's deliberate policy, custom, or
28 practice was the "moving force" behind his constitutional injury. *Galen v. Cty. of*

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1 *Los Angeles*, 477 F.3d 652, 667 (9th Cir. 2007) (quoting *Monell*, 436 U.S. at 694-
 2 95), overruled on other grounds by *Castro v. Cty. of Los Angeles*, 833 F.3d 1060
 3 (9th Cir. 2016). The plaintiff can also meet this burden by showing the
 4 constitutional violation was the result of deliberate indifference to a known need to
 5 train or ratification by the city's chief policy maker. *City of Canton, Ohio v.*
 6 *Harris*, 489 U.S. 378, 389 (1989); *Clouthier v. Cty. of Contra Costa*, 591 F.3d
 7 1232, 1249 (9th Cir. 2010). To meet this requirement, the plaintiff must show that
 8 the municipality's policy was both the proximate cause and the cause in fact of
 9 their injury. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008).
 10 Proving that an injury or accident could have been avoided if an employee had
 11 better or more training to avoid the particular conduct at issue is not sufficient to
 12 establish deliberate indifference in this context; the failure to train or ratification
 13 must be done in deliberate disregard for a known or obvious consequence that
 14 would cause constitutional violations. *Connick v. Thompson*, 563 U.S. 51, 68
 15 (2011); *Bd. of Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 410 (1997).

16 In his FAC and response to Defendants' motion, Plaintiff does not identify
 17 evidence of any particular training provided or not provided by the City that would
 18 show a deliberate indifference to citizens' constitutional rights. He fails to identify
 19 any evidence of ratification by the City. Finally, he fails to show evidence of any
 20 custom, policy, or practice by the City that led to the injuries he suffered.
 21 Accordingly, Defendants' motion is granted and the claims against the City of
 22 Soap Lake are dismissed.

23 4. Supervisory Liability Claim against Chief Cox

24 Plaintiff alleges in his First Amended Complaint that Defendant Chief Cox
 25 should be held liable as Officer Rowland's supervisor. Defendants argue they are
 26 entitled to summary judgment dismissing these claims because Chief Cox did not
 27 directly participate in the incident here and did not direct or know of Officer
 28 Rowland's actions. They also argue that Plaintiff failed to show that any alleged

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1 failure by Chief Cox to train or supervised Officer Rowland proximately caused
 2 his injuries. Plaintiff did not address this argument in his response.

3 A defendant may be held liable as a supervisor under § 1983 “if there exists
 4 either (1) his or her personal involvement in the constitutional deprivation, or (2) a
 5 sufficient causal connection between the supervisor’s wrongful conduct and the
 6 constitutional violation.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011). A
 7 plaintiff must show the supervisor breached a duty to the plaintiff and that breach
 8 was the proximate cause of plaintiff’s injury. *Id.* This causal connection can be
 9 established by setting in motion a series of acts by others or by knowingly refusing
 10 to terminate a series of acts by others, which the supervisor knew or reasonably
 11 should have known would cause others to inflict a constitutional injury.

12 *Blankenhorn v. City of Orange*, 485 F.3d 463, 485 (9th Cir. 2007). A supervisor
 13 can also be held liable for his own actions or inaction in the training, supervision,
 14 or control of subordinates if the supervisor’s action or inaction displays a “reckless
 15 or callous indifference to the rights of others.” *Cunningham v. Gates*, 229 F.3d
 16 1271, 1292 (9th Cir. 2000).

17 As with the claims against the City, Plaintiff does not allege any specific
 18 actions taken by Chief Cox that led to Officer Rowland’s encounter with him.
 19 Plaintiff has failed to allege facts sufficient to make out a supervisory or personal
 20 liability claim against Chief Cox. Accordingly, Defendant’s motion is granted and
 21 the claims against Chief Cox are dismissed.

22 **5. State Law Claims**

23 Finally, Plaintiff’s FAC alleges a number of claims under Washington state
 24 law and the Washington Constitution. Defendants argue that they are entitled to
 25 judgment on all of these claims because Plaintiff fails to state claims upon which
 26 relief could be granted. In response, Plaintiff argues that Officer Rowland lacked
 27 probable cause to arrest him and therefore states a viable claim for the torts of false
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1 arrest and imprisonment, but does not address the arguments with regard to his
 2 constitutional claims, his negligent hiring claim, or his assault and battery claims.

3 The Court first considers Plaintiff's state constitutional claims. He alleges
 4 violations of Article I, Sections 3, 7, 14, and 35 stemming from Defendants'
 5 reckless and callous indifference to his constitutional rights and the failure to
 6 prevent injury to him. The Washington Supreme Court has held repeatedly that the
 7 Washington State Constitution does not automatically create an implied private
 8 right of action for constitutional violations. *Reid v. Pierce Cty.*, 136 Wash.2d 195
 9 (1998). In general, if common law provides an adequate remedy for an injury, the
 10 Washington Supreme Court has declined to extend a private right of action unless
 11 there is some augmentative legislation creating such a right. *Blinka v. Wash. State*
 12 *Bar Assoc.*, 109 Wash. App. 575, 591 (2001).

13 The courts of Washington have already specifically held that there is no
 14 private right of action under Article I, Sections 3, 7, 14, and 35. *Janaszak v. State*,
 15 173 Wash. App. 703, 723-24 (2013) (Section 3); *Reid*, 136 Wash.2d at 213-14
 16 (Section 7); *Jones v. Washington*, No. 2:12-cv-0188-EFS, 2012 WL 3260411, at
 17 *4-*5 (E.D. Wash. Aug. 8, 2012) (Sections 14 and 35). Plaintiff also fails to show
 18 any augmentative legislation that would create a damages action for the alleged
 19 violations here. Defendant's motion for summary judgment is therefore granted
 20 and these claims are dismissed in their entirety.

21 Plaintiff also asserts a number of tort claims, including false arrest, false
 22 imprisonment, assault, and battery. Defendants argue they are entitled to judgment
 23 in their favor because Plaintiff fails to state any of those claims.

24 False arrest and false imprisonment are two distinct claims distinguished by
 25 the context in which each arises. *Bender v. City of Seattle*, 99 Wash.2d 582, 590
 26 (1983). False arrest may be committed only by a person who has legal authority to
 27 arrest or who pretended to have legal authority to arrest. *Id.* In contrast, false
 28 imprisonment may be committed by private individuals without asserting or

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1 pretending to have legal authority. *Id.* In order to make out either claim, the
 2 plaintiff must show that he was deprived of his personal liberty or restrained from
 3 movement. *Id.* at 591. However, if an officer makes an arrest on the basis of
 4 probable cause, the plaintiff cannot hold them liable for false arrest. *Id.* at 592-93;
 5 *McBride v. Walla Walla Cty.*, 95 Wash. App. 33, 38 (1998), *rev'd*, --- Wash. App.
 6 ---, 990 P.2d 967 (1999). Furthermore, under Washington law, an officer cannot be
 7 held liable for an arrest based on probable cause. *See* Wash. Rev. Code. 10.99.070.

8 Because the Court has already found that Officer Rowland arrested Plaintiff
 9 on the basis of probable cause, Plaintiff fails to state a claim for false arrest or
 10 imprisonment as a matter of law. Furthermore, Officer Rowland would be entitled
 11 to statutory qualified immunity and may not be held liable. Accordingly, summary
 12 judgment in Defendants' favor is warranted.

13 Furthermore, Plaintiff's claims for assault and battery also fail. Officer
 14 Rowland is entitled to qualified immunity for the actions giving rise to Plaintiff's
 15 assault and battery claims, he is not entitled to recover on these tort claims. *See*
 16 *McKinney v. City of Tuckwila*, 103 Wash. App. 391, 408-09 (2000).

17 Finally, Plaintiff alleges Defendants City of Soap Lake and Chief Cox were
 18 negligent in hiring, training, retaining, and supervising Officer Rowland and that
 19 their negligence led to his injuries. Defendants argue they are entitled to summary
 20 judgment because they conceded that at all material times Officer Rowland was
 21 acting within the course and scope of his employment with the City of Soap Lake.

22 To hold an employer liable for negligently hiring, retaining, or supervising
 23 an employee who is incompetent or unfit, a plaintiff must show that the employer
 24 had knowledge of the employee's unfitness or failed to exercise reasonable care to
 25 discover their unfitness before hiring or retaining them. *Anderson v. Soap Lake*
 26 *Sch. Dist.*, 191 Wash.2d 343, 356 (2018). However, under Washington law, a
 27 negligent hiring claim is generally improper when the employer concedes the
 28 employee's actions occurred within the course and scope of employment. *LaPlant*

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1 *v. Snohomish Cty.*, 162 Wash. App. 476-479-80 (2011). Such claims are redundant
2 and should be dismissed because an employer is already vicariously liable for the
3 negligent acts of its employees if conducted within the scope of their employment.
4 *Gilliam v. Dep't of Soc. & Health Servs.*, 89 Wash. App. 569, 585 (1998).

5 The City concedes that at all material times Officer Rowland was acting in
6 the scope of his employment when he tased and arrested Mr. Dormaier. And as
7 discussed above, Plaintiff alleged vicarious liability claims against both the City
8 and Chief Cox. Accordingly, the negligent hiring claim should be dismissed as
9 redundant. Defendant's motion is therefore granted.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion to Strike Portion of Affidavit of Justin Rowland in
12 Support of Motion for Summary Judgment, ECF No. 25, is **DENIED**.

13 2. Plaintiff's Motion for Expedited Hearing Re: Motion to Strike, ECF No.
14 26, is **DENIED as moot**.

15 3. Defendants' Motion for Summary Judgment, ECF No. 22, is **GRANTED**.

16 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
17 this Order, provide copies to counsel, enter judgment in Defendants' favor, and
18 close the file.

19 DATED this 12th day of November 2020.



23 A handwritten signature in blue ink that reads "Stanley A. Bastian".
24

25 Stanley A. Bastian
26 Chief United States District Judge
27
28